

Clifton Park Zoning Board of Appeals Meeting Minutes

October 21, 2003

Present: Dale Kelley, Chairman, Michael Dudick,
Skye Heritage, Sandra Pace, Donna Lawton,
Gil Kortz

Absent: Dale Gleason

Also Present: Don Clemens, Building & Development
Louis Renzi, ZBA Counsel

Mr. Kelley called the meeting to order at 7:05 P.M.

OLD BUSINESS

1. An application from Winfield LLC, requesting an area variance from Section 208-33B from the maximum building size in a B-1 zone of 4,800 sq. ft. - building requested = 7,873 sq. ft. - variance requested = 3,073 sq. ft.; an area variance from Section 208-33D from the mandatory architectural restriction in a B-1 zone of all buildings to be consistent with residential dwellings in character; an area variance from Section 208-33B from the required maximum lot density of 12% - proposed density = 12.5% - variance requested = 0.5%, and an area variance from Section 208-35D from the required 25 ft. side yard setback for buildings and parking in a B-1 zone - proposed east side setback = 21 ft. - variance requested = 4 ft., and proposed west side setback of 18 ft. - variance requested = 7 ft.. The property is located at 942 Route 146, Clifton Park. Permit #80447.

Mr. Kelley reviewed the variances being requested and gave a brief summary of the previous public hearing. He noted that the owner went back and made changes to the site plan including architectural changes to the building. He also noted that new packets were received from C. T. Male with color renderings.

Mr. Kelley also noted that he and Dale Gleason previously recused themselves from voting on this application.

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Chris Smith, C. T. Male Associates, highlighted the changes that they made to this application. He feels the plan is much better and meets some of the concerns of the Board.

He began, they previously proposed a building of 7,800 sq. ft. with more of a rectangular shape. They had not done a lot of detailed architectural planning other than a floor plan design. Based on the concerns of this Board that this is one large building and they were asked if they could split into two buildings to break up the massive size of the structure.

They went back and did a lot of architectural design. They reconfigured the whole building with two wings on either end with a central core in the middle. This design is acceptable to Dr. Glasgow and her practice. He also feels it is more aesthetically pleasing from a Town prospective. He noted that when viewed from Route 146 it looks like two buildings until you get into the property. The building is narrower with the wings the roof ends up being shorter, which was a comment made by Town staff. The roof at its peak is 19 ft. high which is in keeping with the residential character of this neighborhood.

Mr. Smith noted that the building has increased in size to 8,063 sq. ft. primarily due to the fact that they had to break up the overall layout. He asked to amend this application to increase the building size. He also mentioned that they added a landscape island between the new and old buildings which creates a screen from Route 146. He also stated that they are proposing a brick facade to the existing building and redoing the mansard roof to match the shingles on the new building. Redoing the roof of the existing building is not possible without opening up a lot of structural concerns, but they are matching a lot of the architectural components of the two buildings.

He continued they are still seeking four variances; one that exceeds the 4,800 sq. ft. maximum building size; one for the architectural design consistent with residential dwellings; one for the total lot density of 12%; and also variances for setbacks. One is for the existing building which is simply a corrective variance and a setback variance is needed for the new building for parking because they feel it is very important to have green space surrounding the new building to break it up from the asphalt and walkways.

Mr. Smith noted that in his cover letter he has outlined many positive aspects to this package. He continued that the Planning Board reviewed this project several months ago and they gave a favorable review. He also noted that he showed this footprint to Jason Kemper and he stated that it appeared to him to be an improvement over the previous submission. Therefore, they are confident that the Planning Board is still supportive of this plan. He also noted that the County Planning Board had noted that

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they feel there is no significant impact and therefore they feel it is a positive aspect.

Mr. Smith stated that this project is for a specific use, it's for Dr. Glasgow and her practice to continue practicing and serving the children of this community. He noted this is a hardship because she cannot continue to conduct her business in the present building. He noted it is beneficial to the community because the Drs. pediatric office is in close proximity to the school, which is a very important component. He also continued that at the last meeting there was overwhelming public support. There were many people who spoke in favor of this project, no one spoke against it. He stated that there is this perceived opposition dealing with whether this sets a precedent which he will address later.

He continued, they will be extending public water and sewer making it closer to where it

ends in the west. He addressed the five criteria in granting a variance as set forth in the zoning law:

- 1) Does this create an undesirable change in the neighborhood - they feel this is very much in keeping with the neighborhood. They spent a lot of time and effort with the design and the other site features so it does not create an undesirable situation;
- 2) Can this benefit be solved by some other means - they went back and looked at splitting the building into two separate buildings. Dr. Glasgow looked at and walked through other buildings similar to that arrangement and it doesn't work. The practice needs to be together in one building, on one floor;
- 3) Is the variance substantial - this can be looked at in two ways: is it substantial in the fact that a 4,800 sq. ft. building is all that is allowed and they are proposing 8,000+ sq. ft. building, yes, you could look at it that way, but the overriding criteria here is the overall density of the site. The site is allowed 12% density which equates to over 12,000 sq. ft. of building area. They are proposing just over 13,000 so they are only 500 sq. ft. above what the maximum allocable is for the entire site, so when it's reviewed from that prospective, they feel it is not substantial;
- 4) Will it have an adverse impact on the environment or the neighborhood - they do not feel there is any adverse effect. They prepared the environmental assessment form and there was nothing that raised a red flag as far as creating any environmental problems;
- 5) Is it self-created - they feel it is not self-created. This is what makes them different from anybody else. Dr. Glasgow's ownership of the property and conducting her business on this property since 1980 pre-dates the current zoning in effect. When she came in 1980 to request her building she could have requested a larger building and with the zoning and Special Use Permit process she could have received approval for a larger building. He noted a building at 963 Route 146 that was approved. So a precedent was set that she could have developed a larger building.

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Now the zoning has changed and they feel the hardship is not created by her but by the change in the zoning. So they feel this is a key item that differentiates her application from any other people that could come along and buy property in this area. He noted there are others who are conducting businesses that pre-dates the zoning and they would have to come before the Board and demonstrate that they are unique and all the merits of their application on an individual basis.

Mr. Smith continued, another point that makes this application unique is that the existing building is 5,300 sq. ft. but is two story. The building footprint is only 2,800 sq. ft., which is much smaller than what is allowed by code, so they feel the existing building needs to remain in order to retain the residential character of this site and it also provides a screen against the new building.

He referred to the perceived opposition to this application. He noted that relates to is the Town eroding the zoning, is the Town putting itself at risk for a law suite either by someone that got a recent approval and thought that they may have been able to develop a larger building or by someone that may come along in the future and feel that "they got a

variance” I deserve a variance too. They feel that their application has the strongest legal standing from any other application that may come along, either from the past or in the future, because Dr. Glasgow’s ownership of the property and her conducting her business pre-dates the zoning. If some developer comes along and buys two or three parcels and proposes a development and requests a variance they can’t say the same thing as this application, so this Board has good standing to deny those applications because they have not conducted a business or owned the property since before the zoning change. He highlighted that that is what makes them different from any one that may have come in the past or may come in the future.

In conclusion Mr. Smith stated there are many positive factors for this application, it’s unique, it’s defensible against legal challenges from any prior or future applicants, and it’s a benefit to the community. The children of this community need to be served by this practice.

Mr. Clemens noted that the Town staff has been working with the applicant since the last meeting and they feel the applicant has made a sincere effort to try to compromise with the Town and to comply as much as possible with the intent of the zoning law. He noted that changing the building to two wings has dropped the roof line of the building considerably to give it more of a residential flavor and it will have the look of two separate buildings. They feel there has been an honest effort to try to meet the intent of the law if they can’t meet the letter of the law. This is still a substantial variance they are asking for but he feels they have come a long way from the initial submission.

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Mr. Kortz asked if the applicant would have been allowed to do something like this under the previous zoning.

Mr. Clemens responded yes, across the street there is a medical office building approximately 10,000 sq. ft. that was approved around 1986 and they were under the same law. It was under the discretion of the Planning Board, with a Special Use Permit, how large a building they wanted to grant. He feels that there would have been a good chance that Dr. Glasgow would have been granted something similar had she asked for it at that time. There is the precedent directly across the street.

Kristin Hammel spoke in favor of this project. She noted that this is a multi-generational practice and she would like to see it expand.

Mr. Kortz asked for clarification on the changes to the variances that were originally requested.

Mr. Smith stated he noted those in his cover letter. He stated the building size has increased to 8,063 sq. ft. making the variance requested 3,263 sq. ft., and the maximum lot density will be 12.4% making the variance requested .4%. The other variances remain

the same.

Mr. Kortz noted that he understands that this is not a self-created hardship and he can see the need for the larger office requirements due to the increase in the practice and new legal requirements. He did state that he has a problem with the variance from the mandatory architectural restriction of all buildings being consistent with residential dwellings in character.

Mr. Smith stated that that actual variance was presented by Town staff and is very subjective.

Mr. Kortz stated he would like to see this issue handled by the Planning Board and not grant a variance for it.

Mr. Smith asked Mr. Clemens if the general consensus is if a building exceeds the 4,800 sq. ft. it automatically triggers that other variance of not being consistent with residential dwelling because the spirit of the zoning was that residential dwellings would not exceed 4,800 sq. ft..

Mr. Kortz referred to the zoning law and stated that he does not want to take that portion of the law (that they be residential in character) away from the Planning Board.

Mr. Clemens noted that the original submission had no residential flavor whatsoever. He agreed that it is subjective but he feels no one could have said that the original submission had any

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residential flavor at all.

Mr. Kortz stated he would like to deny that portion of the variance or have it withdrawn.

Mr. Dudick stated that if that portion of the variance is withdrawn the building could not be built.

Mr. Kortz stated no, it just means that the building would have to be developed still consistent with the mandatory architectural designs of the code. This is a Zoning Board restriction and he does not want to take that ability away from the Planning Board by granting that portion of the variance.

Mr. Smith stated that he now understands Mr. Kortz's concern and they are willing to withdraw that portion of the variance. He noted he now understands that we want to give the Planning Board the ability to deal with the residential character of the building design.

Mr. Kortz mentioned that he feels the existing building should conform with architectural

design of the new building as much as possible.

Mrs. Lawton asked if they will move into the new building and then renovate the existing building and rent it out.

Mr. Smith stated that's what they will do. They are planning new windows and a new facade that will be compatible with the new building. Any renovations to the roof would be cost prohibitive.

Mr. Kortz stated he feels the existing building should be made compatible with the new building as much as possible.

Mr. Clemens noted that is a good point. He noted that he discussed this issue with Jason Kemper, Director of Planning, who also discussed it with the Planning Board Chairman, and it is very important to them that the existing building be made compatible with the new building as far as the architecture goes to tie it all together and gives a uniform look to the site. Also, that is the building that will be most visible.

Mr. Dudick referred to the additional size of the building being required due to the new Federal HIPPA regulations. He noted they are basically designed to protect the privacy of patients and should have been in place in doctor's offices previously. He stated the need for more space due to these regulations is a misleading statement unless there was no consideration for patient privacy previously and he never got that impression regarding this

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practice.

Mr. Smith responded it is more a case of the practice has grown by leaps and bounds and everything gets smaller and smaller. They are using exam rooms to provide patient privacy. He continued the more correct view point is the HIPPA requirements have strained the practice. and they will have the opportunity to address those items in the new layout.

Mr. Dudick asked how they have strained the practice. Mr. Smith stated that they have only one window for check-in and check-out on the sick and well side and that is the extent of the privacy. In the new layout they have a counter for check-in and individual cubes for check-out so they can have consultations which requires more space than what is in the existing building. He continued they are trying to meet HIPPA in a better way.

Erin Atzeni, office manager, stated that with pediatric medicine the nurses triage approximately 200+ calls per day and the nurses have to be able to have a phone to treat an emergency. She continued they do not need double the space to meet HIPPA requirements, there are a lot of reasons they are looking for more space. It is more of a

reconfiguration. Patients can no longer meet with a doctor in a hallway, they have to be put in an exam room. She continued there are definite privacy issues relative to the office.

Mr. Dudick responded he understands what she is saying. He asked if there is any other pediatric practice locally that is larger, as far as size? He continued, he is looking at other practices with more doctors operating in smaller spaces, practices that have their own triage situations that are able to operate in smaller spaces.

Mr. Smith asked Dr. Glasgow to confirm the number of health care providers, four doctors and two physicians assistants?

Dr. Glasgow responded that they realize that Clifton Park is growing and her practice is growing. She noted they realize that medicine is changing as far as the kind of services that they ought to be providing in the future. She continued, pediatrics and adolescent medicine is a speciality where they feel very strongly that they do not just want to be providers of immunizations and prescriptions. There are a lot of other issues, because society is changing, that they would like to address and they feel very strongly as pediatricians they should not only provide medical care, but other issues that are ever so present now, in so far as non medical care, issues of development, obesity, nutrition, etc.. They would like to extend the scope of

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their practice to provide more education to their patients because the better educated the patients are the better they will be able to care for themselves. They are not just looking at themselves as a pediatric office, their view of the future is to really have a pediatric office that goes beyond the scope of just plain immunizations. They would like to be a center for the education and care of children.

Dr. Glasgow also noted that she did a lot of research and visited a center in Frederick Maryland that is state of the art and similar to what she would like to be able to provide to the children of this area. She and her staff have given this much thought and this is the configuration they have come up with.

Mr. Dudick asked if they knew of any other pediatric or medical office in this area that is larger.

Mr. Smith replied the Family Medical Practice on Tallow Wood Drive is a two story building and must be more than 8,000 sq. ft..

Mr. Kortz asked if they provide additional services won't they need additional staff? Dr. Glasgow responded not necessarily, she feels that the current staff is not being utilized to their fullest potential.

Mr. Kortz asked if they want to provide some of the educational services at the same time the doctors are providing medical services in another room and therefore the additional

space is needed. Dr. Glasgow replied yes.

Mr. Dudick inquired about the extension of the public sewer and water that would be beneficial. He asked if this would help any of the neighboring properties.

Mr. Smith stated there would be public extensions and they would cross Route 146. There would be two or three properties to the east, one being Dr. Glasgow and Dr. Styles. One benefit would be that they have to cross the property and the benefit is it gets public sewer and water that much closer to where it ends. He noted they are not proposing private laterals, they are proposing public dedication of main lines and crossing Route 146 is an extensive effort.

Mr. Dudick asked Mr. Clemens to clarify the logic that because they owned the property prior to the zoning they should be able to build whatever they could have previously. He asked that as zoning changes, then requirements change even if you own the property longer?

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Mr. Clemens responded no. Sometimes when zoning changes it entitles those property owners to certain grandfathered rights, but it is not always the case. Sometimes when zoning changes it puts more restrictions on that property owner and rights they had previously they no longer have. That is what happened here in that in 1978 or 1979 if they had, through the Special Use Permit process that was in place at that time, as a residential district they had an open ended ability to get buildings approved, there was no specific size limit. When the B-1 zone came in it put specific size limits on buildings in that area so in essence it restricted the use they had of that property to some degree.

Mr. Dudick asked if they would be willing to make the redesign of the front building a condition for granting this variance.

Mr. Smith replied yes.

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mrs. Pace seconded, approval unanimous.

Mr. Kortz made a motion to approve this variance as amended. He made a motion to approve a variance of 3,263 sq. ft. to allow for a building size of 8,063 sq. ft.; an area variance of .4% for lot density to allow for a lot density of 12.4%; and an area variance of 4 ft. for building setback and parking to allow for a setback of 21 ft. on the east side and an area variance of 7 ft. to allow for a setback of 18 ft. on the west side of the building with the condition that the existing building also be remodeled to be compatible with the new building to the maximum extent possible.

Mr. Renzi also noted for the record that the applicant is withdrawing that portion of the application dealing with the request for a variance from the mandatory architectural

restriction in a B-1 zone of all building to be consistent with residential dwellings in character.

Ms. Heritage seconded.

Mr. Clemens asked if it should be put in the record that the five requirements for granting an area variance have been met.

Mr. Renzi noted that through Mr. Kortz's earlier discussion and the applicant's competent representation it appears that the five statutory requirements that the Board needs to consider prior to voting have been addressed. The issue of the applicant's long standing ownership of this parcel is key as has been mentioned and is one of the things to be considered even though it is not just positive in and of itself. He also noted that the applicant's counsel has provided a substantial amount of legal research to the Board that has been shared, as well as research done by myself and

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Mr. Pellagalli, Counsel for the Planning Board. Mr. Renzi continued, he believes all the criteria have been met.

Ayes: Kortz, Heritage, Dudick, Pace, Lawton. Noes: None.

NEW BUSINESS

2. An application from Rapp Signs Inc., requesting an area variance from Chapter 171 of the Town Code (Sign Law) to allow for a second wall sign of 24 sq. ft. above the main entrance and for two (2) directional signs with logo's of 2.66 sq. ft. each - allowable = 2 sq. ft. - variance requested = .66 sq. ft. each with bank logo. The property is located at Village Plaza Shopping Center, Clifton Park. Permit #80464.

The secretary read the legal notice as it appeared in the Daily Gazette on October 16, 2003.

Pat Doyle, Rapp Signs, presented this application. He stated that Central National Bank took over an existing banking office in the Village Plaza. The new sign is on the back of the building facing the main driveway. They are requesting a duplicate sign to go over the front entrance. The property is unique because the main entrance to the plaza is the back of the building, so in order to get exposure from that entrance the sign had to be put on the back of the building, but as you go around the building there is no signage indicating where the front of the bank is. The two directional signs being requested are slightly larger than allowed by code due to the fact that the bank's name appears on them. This is due to there being several other businesses in that building and they need to have it clear for motorists to safely get around the property and enter the drive-up area in the correct direction. They feel this is the best way to accomplish that.

Mr. Clemens stated he supports this request due to the unique location of the building and the numerous tenants in the building. He feels the second sign is necessary and the directional signs are necessary to direct the customers to the correct area.

Mr. Kelley noted that this is a logical request and is needed for safety.

There was no public comment. Mr. Dudick made a motion to close the public hearing, Mrs. Pace seconded, approval unanimous.

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Mr. Dudick made a motion to approve this variance as presented. Mrs. Pace seconded. Ayes: Lawton, Pace, Kelley, Dudick, Heritage, Kortz. Noes: None.

3. An application from Patrick & Diane DeSorbo, requesting an area variance from Section 208-12 from the required 80 ft. front yard setback for an accessory structure - proposed setback = 68 ft. - variance requested = 12 ft.. The property is located at 2 Cranberry Lane, Clifton Park. Permit #80466.

The secretary read the legal notice as it appeared in the Daily Gazette on October 16, 2003.

Patrick DeSorbo presented this application. He stated he would like to put up a shed to hold lawn and pool accessories. He noted if the setbacks were met it would have to be in the pool and the tree area. He noted that his neighbors have no objections to this request and presented a letter for the record that he sent to them regarding this project.

Mr. Clemens noted that this is a corner lot and is only 82 ft. on one end and 115 ft. on the other so meeting the 80 ft. setback is not feasible. He stated he has no objections to this request.

Mr. Dudick recused himself from voting on this application as he is a personal friend of the applicant.

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mrs. Lawton seconded, approval unanimous.

Mrs. Pace made a motion to approve this variance as requested. Ms. Heritage seconded. Ayes: Kortz, Heritage, Kelley, Lawton, Pace. Noes: None.

3. An application from Carol & Robert Wicks, requesting an area variance from Section 208-11 for a second residence on one lot and a second area variance from the required 10 ft. side yard setback - proposed setback = 9.5 ft. - variance requested = .5 ft.. The property is located at 328 Moe Road, Clifton Park. Permit #80467.

The secretary read the legal notice as it appeared in the Daily Gazette on October 16,

2003.

Dwayne Rabideau, VanGuilder Associates, presented this application. He noted there is an existing garage and they would like to put an addition on it for a residence for their daughter so she could be close by the family. He continued, they want to add on to the garage in the back which requires the setback variance. The second variance is due to the fact that there would

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be two residences on one lot.

Mr. Rabideau noted there would be minimal visual impact due to the fact that the addition will be on the rear of the garage. He presented a photograph taken from Moe Road.

Mr. Clemens noted that this is an unusual request. He asked why they are not considering an addition onto the existing house instead of making a second residence.

Mr. Rabideau noted it would be an economic hardship because the existing house is two stories in the back and it would be less expensive to put the addition on the back of the garage.

Mr. Kortz asked about the size of the addition. Mr. Rabideau responded it is 24' x 24'. Mr. Kortz asked if it would not look like a garage any longer. Mr. Rabideau stated he believes it will stay somewhat like a garage but will be for residential use. He is not sure what changes will be made to the exterior.

Mrs. Pace asked if the garage will be removed. Mr. Rabideau stated yes, it will be a residence. He noted that the applicant has a contract to purchase the parcel contingent upon these approvals. He stated this applicant has tried previously to have another parcel off Woodin Road approved for this type of situation and has not been successful.

Mr. Kortz asked if the applicant has the condition that the second residence be detached from the house. Mr. Rabideau responded no. This opportunity came along and this would work for her.

Mr. Dudick inquired about the reason for this request.

Mr. Rabideau responded that the applicant would like her daughter nearby for family reasons.

Mr. Dudick asked about the difference in price if the addition were put on the house. Mr. Rabideau stated due to a high ground water table the addition would have to be in the back and would have to be two stories and would be more costly.

Mr. Kortz asked if this were approved would it have to go before the Planning Board?

Mr. Clemens responded no.

Mr. Kelley asked what the minimum size of a residential structure could be. Mr. Clemens responded 960 sq. ft.. Mr. Kelley asked what the size of this residence would be. Mr. Rabideau responded 24' x 48' or 1,152 sq. ft..

Mrs. Lawton asked if this could turn into a rental. Mr. Kelley stated if there was an approval it could be made a condition that this would have to stay with the ownership of the property and could not be rented if the circumstances changed.

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Mr. Kelley noted the ECC's recommendation that this variance should limit the use to the existing owners only, non-transferable if at all possible, this would eliminate any future buyer from using it as a second residence property. Mr. Clemens stated he does not know how that could be enforced.

Mr. Kelley stated he believes the Town has worked diligently to take care of its zoning and make sure residential properties represent the integrity of the community. He noted he is sensitive to the personal situation of the Wicks family but he sees problems in the future if this variance is granted. He would like to protect as much as possible the residential characteristic of the community and the fact that when you have a single building lot, it's a single building lot. He understands the personal issues and many Special Use Permits have been granted to single family homes that want to add on to accommodate ailing parents or someone who needs special care and that has been done in the past.

Mr. Kortz also noted that the applicant does not own the property at this time.

Mr. Clemens asked if they considered growing the garage towards the existing house and perhaps joining it. Mr. Rabideau responded no, they were looking at trying to minimize the visual impact. He asked if that would be a consideration by the Board, instead of going back go towards the house and a "sunshine" requirement that when these owners cease to live there the two residences stops so it doesn't turn into a rental situation.

Mr. Kortz responded it's not just a rental situation, no one could live there and now you have a building that looks like a residence, functions as a residence and not functional for anything else.

Discussion continued on the feasibility of growing the garage towards the main residence and applying for a Special Use Permit for a two family residence and/or other options that may be available.

Mr. Rabideau asked to table this application so he could discuss this with his client.

4. An application from Karl E. Salzer, requesting an area variance from Section 208-12 from the required 80 ft. front yard setback for an accessory structure - proposed setback =

25 ft. - variance requested = 55 ft.. The property is located at 77 Vischer Ferry Road, Rexford. Permit #80465.

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The secretary read the legal notice as it appeared in the Daily Gazette on October 16, 2003.

Allen Harvey presented this application. He noted there were no adverse comments from the neighbors. It is a difficult lot due to the topography of the land. There really is no other place to build the shed.

Mr. Clemens noted this is a unique lot, it's one of a kind, there is steep terrain on the north end of the lot and Old Vischer Ferry Road goes around the house. There really is no other place for them to go. He stated he supports this variance.

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mr. Dudick seconded, approval unanimous.

Mr. Dudick made a motion to approve this variance as requested. Mrs. Lawton seconded. Ayes: Kelley, Kortz, Dudick, Pace, Lawton, Heritage. Noes: None.

Mr. Kelley made a motion to approve the minutes of October 21, 2003, Mr. Kortz seconded, approval unanimous.

Mrs. Pace made a motion to adjourn the meeting at 8:37 PM, Mrs. Pace seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary

cc: Town Clerk, Zoning Board Members, Louis Renzi, Counsel,
Don Clemens, Department of Building and Development, Planning Board, ECC
Members